IN THE SUMPRME COURTT OF BANGLADESH

HIGH COURT DIVISION DHAKA.

(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Sharif Uddin Chaklader

Civil Revision No. 4847 of 2004

In the matter of

Abu Taher and others

Plaintiff-Respondent- Petitioner

Vs.

Rostam Ali and others

Defendant-Appellant-Opposite parties.

Mr. Md. Zakir Hossain, Advocate

For the petitioners

Mr. ~~Muhammad Adter-uj-Zaman~~ Abdul Kuddus Miah, **Advocate**

For the opposite parties.

Judgment on 30.05.2011

This rule by the plaintiff directed against judgment and decree dated 04.09.2008 passed by the learned Additional District Judge, 1st Court, Comilla, allowing Title Appeal No. 75 of 1985 thereby reversing those dated 02.05.1985 passed by the learned Mnusif, Upazilla Court, Laksam, Comilla in Title Suit No. 479 of 1983.

The case of the plaintiffs is that, suit land originally belongs to Fateh Ali, Makram Ali, Hasan Ali and Safar Ali; C.S. record was prepared

accordingly. Makram Ali died leaving behind aforesaid heirs. There being short of space for living at the existing homestead, Fateh Ali and Safar Ali constructed new homestead in ejmali. Hasan Ali died leaving, two sons, Gafur Ali and Kalu Miah but C.S. khatian No. 563 was recorded along with the name of Gafur Ali, Kala Miah in the name of defendant No. 1-3 and 11, in the name of Sekendar Ali predecessor of defendant No. 4-6, in the name of Safar Ali, predecessor of defendant No. 7 and also in the name of Nuruzzaman, predecessor of defendant No. 8, 9 and 10, which has recently been come out and on the basis of wrong record, defendants denied title of the plaintiffs and plaintiffs having been in possession for more than 12 years, acquired good right, title and interest over the suit land and defendants have no right, title and interest over the suit property, hence the suit.

Defendant No. 1, 2(Ka) and 3 in their written statement stated that the suit land originally belongs to Fateh Ali, Hasan Ali, Makram Ali and Safar Ali; C.S. khatian was prepared accordingly; land of Safar Ali for arrear rent put on auction and Alimuddin purchased the suit land and got possession and they wanted to give korfa pattan of suit land and Alimuddin and his son, Sekandar Ali after paying proper nazar salami got 357 decimals of land of the aforesaid jotes at yearly joma at Tk.45/= on 12.7.43, executed kauliyat and paying rents regularly and living on the suit land and on compassionate ground allowed predecessor of plaintiffs Hasan Ali to live on 6 decimals of land to the east of suit jote who living on the said land by constructing a homestead with his family and accordingly

Kala Miah, Gafur Ali sons of Hasan Ali living there. Plaintiffs have no right, title, possession and interest in the suit land. Defendants by wakf delivered some lands to local Mosque and constructed a Mosque which is just in front of the homestead of the defendants and plaintiffs had no possession, title and interest, defendants prayed for dismissal the suit.

Trial court decreed the suit but appellate court dismissed the suit.

Trial court by a sketchy judgment held payment of rent by the defendant No. 1-3 was not made lawfully and found that:-.

"On strict scrutiny and on careful perusal of documents which as filed by the defendants, it is clear that the defendants or their predecessors sold the properties in plot No.2318. Except a deed dated 14.3.73. But the purchaser of that deed not appeared before the court as witness. So it is clear that the plaintiffs have possession in the suit plot No. 2317."

Title Appeal No. 75 of 1985 was taken and learned Additional District Judge first court, Comilla allowed the appeal and dismissed the suit holding that plaintiffs failed to prove their possession and defendants through 22 rent receipts prove possession over the suit land.

Mr. Md. Zakir Hossain, learned Advocate, appearing for the defendant petitioners submits that learned Judge of Appellate Court did not at all consider the findings of the trial court as the payment of rent by the defendants are found by the learned Assistant Judge as not legal has not been reversed by the appellate court and S.A. khatian recorded the name of defendants have no presumptive value of possession as such the suit is

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maintainable without prayer for khash possession. Learned Advocate further submits that court of appeal below failed to consider that predecessor of the defendants auction purchase of the suit land has not been proved as such plaintiffs right, title and possession over the suit land has not been extinguished as such the judgment of the appellate Court is not maintainable and liable to be set aside.

Mr. Abdul Kuddus Miah, learned Advocate, appearing for the opposite parties on the other hand submits that, it is cardinal principle of land that plaintiff is to prove his case. Learned Advocate on reference to the exhibit apparently exhibit A, B and C series and also to the depositions of the witnesses submits that defendants proved their possession uninterruptly from the date of auction and from the date of taken seitled of the suit land from the auction predecessor, as such, defendant acquired title and plaintiff's title and possession over the suit land having not proved the suit in present form is not maintainable. Learned Advocate on referred to the decision of Erfan Ali –Vs-Joynul Abedin Mia 35 DLR (AD)-216 where it is held that "rent receipts, though not documents of title, are important items of evidence of possession and may be used for collateral evidence of title since possession generally follows title" Learned Advocate next relied on the decision of Bazlur Rahman and others-Vs- Sadu Miah and others 45 DLR (AD)-391 where it has been held that as per Section 13 of the Evidence Act " A sale certificate is not a title deed but it is only an evidence of title. It is not incumbent upon the auction purchaser or his transferee to prove right to property only by proving the sale certificate- the

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auction sale can be prove by any other evidence independent of the sale certificate."

Let me proceed with my judgment.

It is an admitted position that suit land originally belongs to Fazar Ali, Hasan Ali, and Safar Ali and C.S. khatian was prepared accordingly. P.W.1 in his deposition stated that he could not say whether he pay rent to the Government. Appellate Court found possession of the defendant and also of the opinion that plaintiff did not produce any witness that S.A. record was wrongly prepared. Learned Judge also found that plaintiff's rent receipts are not genuine and legal one and found that defendant through 22 rent receipts proved the possession of suit land.

Considering all these aspects of the case, exhibits filed by the plaintiff and defendant and depositions of the witnesses of plaintiffs particularly of P.W.1, I find that the learned Judge of the Appellate Court committed no illegality in dismissing the suit on allowing the appeal. In find no substance in the rule.

In the result, the rule is discharged without any order as to cost.

Send down the lower court records.

Communicate this order at once.

The order of stay granted earlier by this Court is hereby vacated.

Sharif Uddin Chakladar.

R.Islam.

Read by : 13.02.11

Agreed.